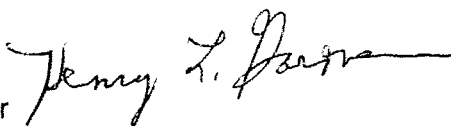


## M E M O

Date: November 5, 2009

To: Executive Board

From: Henry L. Gardner  
Executive Director



Subject: **Executive Director's Report**

The following report highlights some of our most recent activities.

### **SB 406 and SB 279 Update**

Governor Schwarzenegger vetoed SB 406 and SB 279, the two pieces of legislation that were a major part of ABAG's strategy for program development. SB 406 would have authorized ABAG and MTC to levy a \$2 vehicle registration fee to support implementation of SB 375. The fee would have raised approximately \$12 million annually, half of which would have been provided to cities and counties and congestion management agencies and half to ABAG and MTC to carry out their mandated functions under SB 375.

We are currently planning how to amend our legislative approach following the Governor's veto of SB 406. It is not anticipated that the Governor will alter his approach, which has been to require fee setting authority such as SB 406 to incorporate a vote of the people. ABAG staff is interviewing key actors and legislative allies, including the bill's author, Senator DeSaulnier, before recommending how to amend the bill for the next legislative session. In a meeting in early November among the largest Metropolitan Planning Organizations (MPOs), including MTC and ABAG, it was recognized that the need for planning resources to undertake the SB 375 mission is still paramount. The discussion about these MPOs supporting a revised SB 406 that incorporated a vote of the people was encouraging, and ABAG was asked to organize the legislative staff to make a proposal.

With respect to the veto of SB 279, it is also not expected that the Governor will alter his opposition. Therefore, ABAG is exploring how to proceed under current AB 811 authority. SB 279 would have amended the Mello-Roos Act to allow for a district to finance energy efficiency improvements on real property. This amendment would have made it easier and simpler to accomplish the program elements we have identified for a Bay area wide energy efficiency program. . A staff report on the status of the ABAG SEED program is on the agenda and covers this issue.

### **San Francisco Bay Trail**

Chevron has agreed to donate 1.5 miles of Bay Trail easements on the western side of the Point San Pablo Peninsula to the East Bay Regional Park District. This is a major step towards completing the Bay Trail in Richmond. Additional easements are still needed to secure continuous access. ABAG/Bay Trail staff continues to work closely with the City of Richmond, Caltrans, and Chevron to close the trail gap on Refinery property between Point Richmond and the Richmond/San Rafael Bridge.

On October 21, 2009, the City of South San Francisco celebrated completion of their final Bay Trail gap with the installation of a bridge linking two completed segments over a slough near Genentech. Construction of the bridge was funded by the South San Francisco Scavengers and HCP, Inc. as part of a BCDC permit. This bridge opens up over 10 miles of continuous trail between Brisbane and San Francisco International Airport. Richard Garbarino, Councilmember, City of South San Francisco, and Executive Board member participated in the festivities.

### **San Francisco Estuary Partnership**

SFEP sponsored a green streets/resilient watersheds tour in El Cerrito on October 9. The tour led by Lisa Owens-Viani had 40 attendees, including city planners and public works staff from cities surrounding the Bay, as well as a board member from the S.F. Regional Water Quality Control Board, staff from the State Water Resources Control Board, Department of Water Resources, and guests from the Malaysian government's erosion control department.

SFEP Director Judy Kelly and staffer Debbi Egter van Wissekerke, met with a group from the Dutch Ministry of Housing, Spatial Planning (LID) and the Environment to discuss San Francisco Bay Delta issues, including climate change, which could be applied to problems in the Dutch delta area. The meeting took place on Wednesday, October 21 at the offices of BCDC in San Francisco. Judy Kelly gave an overview of the Partnership and Will Travis gave a presentation on Bay history and current issues. Nadine Hitchcock and Brenda Buxton from the Coastal Conservancy presented information on the South Bay Salt Ponds as an introduction to a tour of the Salt Ponds for the visitors.

SFEP launched an updated web site ([www.sfestuary.org](http://www.sfestuary.org)) that includes pages for all new Estuary 2100 projects as well as other new projects, and videos and slideshows about the Estuary.

SFEP/ABAG received finance agreements for forgivable loan funding for two expanded use projects; the El Cerrito Green Streets pilot project to retrofit a dense urban corridor with green stormwater infrastructure (\$392,000) and the Bay wide trash capture device project (\$5 million).

SFEP/ABAG received a new contract from the California Natural Resources Agency for assistance to the CalFed Science Program for contracting with science experts to provide ongoing detailed technical advice to the program and to assist in the integration of scientific practices in CalFed programs. (\$300,000).

### **ABAG PLAN**

The PLAN Board (ABAG's Risk Management and Insurance Program) met on November 4<sup>th</sup> and 5<sup>th</sup> in Palo Alto to address two important issues: 1) A new policy regarding PLAN liabilities for regulatory inverse claims arising before July 1, 2008, and 2) Concerns of some members over the role of the Board in management decisions regarding operation of PLAN.

Regarding the regulatory inverse claims issue, you may recall that a claim involving the City of Pacifica was the subject of a court decision which interpreted PLAN's coverage policy to insure a regulatory inverse condemnation claim against the City of Pacifica. Using a group facilitator, the Board reached agreement on a framework for resolving these claims that limits the length of time they would be honored by PLAN, caps the dollar amounts payable for claims from each member, and limits PLAN's liability to defense costs only. Language reflecting these provisions in an amendment to PLAN's Memorandum of Coverage will be presented for action by the PLAN Board in the near future.

The second issue addressed at the Board meeting this week involves ABAG's role as administrator of services required to operate PLAN. ABAG provides administrative support and claims adjusting services to PLAN under an Agency Agreement first executed in 1986 when PLAN was created. ABAG employs all of the staff and manages all contracts required to support PLAN, and provides services to its 31 members, consistent with the policies and employment practices of ABAG. PLAN reimburses ABAG for these costs in the same way as do other entities and programs that ABAG supports. The issue before the PLAN Board has been whether it has the authority and independence from ABAG that it believes it needs to carry out its mission most effectively.

The Board has decided to enter into discussions with ABAG to clarify these issues and determine if mutually acceptable solutions are possible. We expect to have a resolution by early next year.

### **San Francisco Bay Restoration Authority**

The Governing Board of the San Francisco Bay Restoration Authority met on October 28, 2009. The Governing Board heard a report from Will Travis, Executive Director, San Francisco Bay Conservation and Development Commission on building a regional focus; appointed members to the Advisory Committee; and formed a committee to implement public opinion polling and research work plan.

